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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,652	06/24/2002	Ahi-Izil Izilov	Luzzatto & Luzzatto	6397

7590

09/21/2004

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EXAMINER

ROBERT, EDUARDO C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/031,652

Applicant(s)

IZILOV ET AL.

Examiner

Eduardo C. Robert

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed. *2/10/04*
- 6) ☒ Claim(s) 1-11, 21-26, 55/(1-11, 21-26), 56 is/are rejected.
- 7) ☐ Claim(s) 12-20, 27-54, and 55/(12-20, 27-54) is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/27/02; 8/28/02
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 57 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim can not depend from another multiple dependent claim, e.g. 36. See MPEP § 608.01(n). Accordingly, the claim 57 not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 58 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10, 11, 24, 25, 26, 55/(1-7, 10, 11, 24, 25, 26), and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Izilov (Russian Patent 938,969 cited on PTO-1449).

Izilov discloses a device comprising an elongated screw member having a proximal portion with a first cylindrical member with external screw thread (see Figure 1). The screw member further comprises a distal portion with a second cylindrical member having an internal cavity and an open end and at least one lateral portal (see Figure 1). Also, the screw member has an antimigration device, e.g. 3, accommodated in the cavity and comprising at least one anchoring means having gripping means (see Figures 1 and 8). The anchoring means is selectively extendable such that the gripping means extends to the outside of the distal portion via a corresponding portal (see Figure 1). The device further comprises a compression means, i.e. a nut 5, engagable with the distal portion of the screw member and axially displaceable. The compression means has a proximal pressure face. The antimigration device comprises an axially movable fixation means 4. The first and second cylindrical portions are integrally joined. The first screw thread diameter is similar to an external diameter of the second cylindrical member (see Figure 1). The screw is self-taping as suggested by the figure. The proximal portion of the screw member has at least one longitudinal groove (see Figure 8). The portal in Figure 1 is elongated thus can be considered a slit.

Applicant is reminded that an anticipation under 35 U.S.C. 102(b) or 102(e) is established when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data System, Inc.*, 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984). Furthermore, it is well settled that the law of anticipation does not required that the reference teach what appellant is teaching or has disclosed, but only that the claims on appeal “read on” something disclosed in the reference, i.e. all limitation of the claims are found in the reference. *Kalman v. Kimberly Clark Corp.*, 713 F.2d

Art Unit: 3732

760, 218 USPQ 781 (Fed. Cir. 1083). Moreover, it is not necessary for the applied reference to expressly disclose or describe a particular element or limitation of a rejected claim word for word as in the rejected claim so long as the reference inherently discloses that element or limitation. *Standard Havens Products Inc. v. Gencor Industries Inc.*, 953 F.2d 1360, 21 USPQ 2d. 1321 (Fed. Cir. 1991).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 21-23, and 55/(8, 9, 21-23) are rejected under 35 U.S.C. 103(a) as being unpatentable over Izilov (Russian Patent 938,969 cited on PTO-1449).

Izilov discloses the claimed invention except for the distal thread surfaces having a distal tilt angle of between about 2° to about 4° (claim 8) and a proximal tilt angle of between about 30° to about 35°, and the nut 5 having sixth threads complementary to seventh threads on the distal portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Izilov with the distal thread surfaces having a distal tilt angle of between about 2° to about 4° and a proximal tilt angle of between about 30° to about 35° and the nut 5 having sixth threads complementary to seventh threads on the distal portion, since it has been held that where the general conditions of a claim are disclosed in the

Art Unit: 3732

prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

***Allowable Subject Matter***

Claims 12-20, 27-54, and 55/(12-20, 27-54), 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

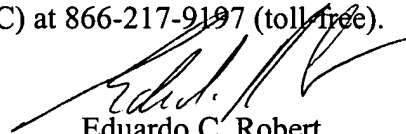
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo C. Robert whose telephone number is 703-305-7333.

The examiner can normally be reached on Monday-Friday, 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Eduardo C. Robert  
Primary Examiner  
Art Unit 3732

E.C.R.